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TRANSMITTAL  
FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

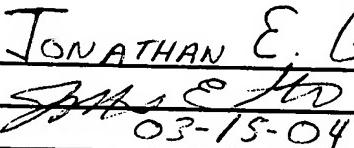
Application Number	10/067,979
Filing Date	02-08-02
First Named Inventor	FISCHETI ET AL
Art Unit	1651
Examiner Name	PRATT, FRANCISCO

Attorney Docket Number

## ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Group
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input checked="" type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application	<input type="checkbox"/> Remarks	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	JONATHAN E. GRANT / GRANT PATENT Services	
Signature		
Date	03-15-04	

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name		
Signature		Date

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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# FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)**475**

## Complete if Known

Application Number	<b>06/19067,979</b>
Filing Date	<b>02/08/02</b>
First Named Inventor	<b>FISCHETTI, Vincent</b>
Examiner Name	<b>PRATS, FRANCISCO CHANDLER</b>
Art Unit	<b>1651</b>
Attorney Docket No.	

## METHOD OF PAYMENT (check all that apply)

 Check    Credit card    Money Order    Other    None
 Deposit Account:

Deposit Account Number	
Deposit Account Name	

The Director is authorized to: (check all that apply)

- Charge fee(s) indicated below    Credit any overpayments  
 Charge any additional fee(s) or any underpayment of fee(s)  
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 770	2001 385	Utility filing fee	
1002 340	2002 170	Design filing fee	
1003 530	2003 265	Plant filing fee	
1004 770	2004 385	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
<b>SUBTOTAL (1) (\$)</b>			<b>475</b>

## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	-20** =	X	=	Fee from below	Fee Paid
Independent Claims	- 3** =	X	=		
Multiple Dependent					

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 86	2201 43	Independent claims in excess of 3
1203 290	2203 145	Multiple dependent claim, if not paid
1204 86	2204 43	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
<b>SUBTOTAL (2) (\$)</b>		

\*\*or number previously paid, if greater; For Reissues, see above

## 3. ADDITIONAL FEES

Large Entity   Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 420	2252 210	Extension for reply within second month	
1253 950	2253 475	Extension for reply within third month	<b>475</b>
1254 1,480	2254 740	Extension for reply within fourth month	
1255 2,010	2255 1,005	Extension for reply within fifth month	
1401 330	2401 165	Notice of Appeal	
1402 330	2402 165	Filing a brief in support of an appeal	
1403 290	2403 145	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,330	2501 665	Utility issue fee (or reissue)	
1502 480	2502 240	Design issue fee	
1503 640	2503 320	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 770	2809 385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 770	2810 385	For each additional invention to be examined (37 CFR 1.129(b))	
1801 770	2801 385	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

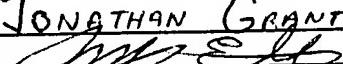
Other fee (specify) \_\_\_\_\_

\*Reduced by Basic Filing Fee Paid

**SUBTOTAL (3) (\$)** **475**

(Complete if applicable)

## SUBMITTED BY

Name (Print/Type)	<b>JONATHAN GRANT</b>	Registration No. (Attorney/Agent)	<b>34830</b>	Telephone	<b>301-603-9071</b>
Signature					
Date	<b>03-15-04</b>				

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Fischetti, et al.

Serial No. 10/067,979

Group: 1616

Filed: 02/08/2002

Examiner: Francisco Chandler Prats

For: THERAPEUTIC TREATMENT OF UPPER RESPIRATORY TREATMENTS

The Honorable Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

**AMENDMENT & RESPONSE**

Sir:

First, please note that all correspondence should go to the address of the undersigned

attorney, said address being:

2107 Hounds Run Place  
Silver Spring, Maryland 20906

Applicants are filing this amendment and response, along with a Petition for Extension of

Time and the appropriate fees.

**IDS**

An 11 page IDS was filed on June 25, 2003, along with 153 references. No sign of this IDS is indicated in the record. Applicant urges that the USPTO search for this IDS, or make of record the identical IDS and References (along with the corrected documents filed) filed in 10/067,991.

## **IN THE TITLE**

Please see attached

## **IN THE CLAIMS**

Please see attached.

## **IN THE ABSTRACT**

Please see attached.

## **RESPONSE**

Applicants have canceled old claims 8-43 and replaced them with new claims 44-51.

In the Office Action, claims 8-24 were rejected under 35 USC 101 as claiming the same invention as that of claims 1-14 and 17-25 of prior U.S. Patent No. 5,985,271.

Applicants have canceled that claim, and note that the added claims are not barred as a result of statutory double patenting.

MPEPE 804 II A states:

A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting would not exist. For example, the invention defined by a claim reciting a compound having a “halogen” substituent is not identical to or substantively the same as a claim reciting the same compound except having a “chlorine” substituent in place of the halogen because “halogen” is broader than “chlorine.” On the other hand, claims may be differently worded and still define the same invention. Thus a claim reciting a widget having a length of “36 inches” defines the same invention as a claim reciting the same widget having a length of “3 feet.”

Thus, according to the “negative definition” found in the USPTO and as determined by the courts, the claims as presently written do not rise to the level of “double patenting.”

Applicants will acknowledge that there **may be** “obviousness double patenting.” A terminal disclaimer will be prepared upon agreement of the claims in question or their possible subsequent amended progeny in this application.

The application is now in condition for allowance. Please call the undersigned at (301) 603-9071 if you have any questions or comments. Thank you.

Very truly yours,

Jonathan E. Grant

Reg. No. 34,830

2107 Hounds Run Place  
Silver Spring, Maryland 20906  
(301) 603-9071

**IN THE TITLE**

Please cancel the title and replace it with the following:

--THERAPEUTIC TREATMENT OF UPPER RESPIRATORY INFECTIONS USING A

NASAL SPRAY--